

# **EXHIBIT C**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

CITIZENS FOR CONSUME, et al . CIVIL ACTION NO. 01-12257-PBS  
Plaintiffs .  
V. . BOSTON, MASSACHUSETTS  
DECEMBER 4, 2008  
ABBOTT LABORATORIES, et al .  
Defendants .

TRANSCRIPT OF MOTION HEARING  
BEFORE THE HONORABLE MARIANNE B. BOWLER  
UNITED STATES MAGISTRATE JUDGE

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1 We'll take a 10 or 15 minute break.

2 RECESS

3 THE CLERK: Resuming on the record, Your Honor, AWP  
4 MDL litigation, Civil Action No. 01-12257 and others.

5 THE COURT: All right, going back for a moment to  
6 Docket Entry 5112, as to Reed and Vito, I'm inclined to agree  
7 with the government. That said, I direct you to further  
8 consult and discuss each objected to question with respect to  
9 each deposition in the context of Judge Saris' recent  
10 deliberative process rulings and any related rulings on appeal  
11 of my rulings. One option would be to provide written answers  
12 to the objected to questions. In the event that you can't  
13 agree you can renew the motion at which point I will consult  
14 with either Judge Saris or her clerk and decide whether or not  
15 she wants me to deal with it or she will deal with it. I don't  
16 want to end up with inconsistent rulings here. I think this is  
17 maybe a safer course.

18 Okay? All right, so we start with 5174.

19 MR. WINCHESTER: That's ours, Your Honor.

20 THE COURT: Right.

21 \* MR. WINCHESTER: This has to do with a set of  
22 requests for admission that we served on the government and  
23 neither Ms. St. Peter-Griffith nor I has any interest I think  
24 in walking the Court through 175 RFAs today, which I'm sure  
25 will make you somewhat happy but my hope is that if you go

1 through some--

2 THE COURT: The only thing that will make me happy  
3 right now is finding my Blackberry.

4 MR. WINCHESTER: There have been a lot of articles in  
5 Chicago recently about our President-elect Obama being stripped  
6 of his Blackberry now having a lot of issues--

7 THE COURT: One feels terribly insecure without it.

8 MR. WINCHESTER: What I hope to do with respect to  
9 these, Your Honor, is to break them down into some categories  
10 on which we have principal areas of dispute. And then maybe  
11 with some guidance from the Court we can make some further  
12 progress.

13 The first category as we've set forth in our brief,  
14 Your Honor, and that I'll start with is the first 69 of these  
15 RFAs where literally what we did is to take direct quotes from  
16 government officials and congressional testimony and reports,  
17 various things of that nature, documents we have, put these  
18 direct quotes in an RFA, attach the underlying document where  
19 the quotes appear and say, admit that this is a true and  
20 correct document, that the statements were made at or near the  
21 time and with information provided by a person with knowledge  
22 and that it was kept in the regular course of business; your  
23 basic stuff that RFAs are for getting the grounds of  
24 admissibility in. And what we get back from the government is  
25 a, literally ton of objections, no straight answers for these

1 which are just admit the person said it, it's quoted in a  
2 document type of thing which we thought were easy lay up  
3 questions.

4           Just as a couple of examples, Your Honor, if you look  
5 at Exhibit B to our motion, it's actually the government's  
6 responses to RFAs. So if you look at No. 24 we have a quote.  
7 It says, "In 1990 the secretary of HHS, the head person,  
8 testified before Congress that many studies," this is a quote,  
9 "and most information available on this subject show that the  
10 list prices for drug products commonly known as the average  
11 wholesale process, AWP, rarely, if ever, reflect the prices  
12 that pharmacies actually pay. Since 1976 our policy has been  
13 that AWP is not an acceptable measure of EAC, estimated  
14 acquisition cost." It goes directly to what we've been saying  
15 about the government knowing that these two did not equate and  
16 that AWP, which was the benchmark for their payment, was not in  
17 fact an average of a cost anybody paid. That testimony is  
18 there. All we say is admit it, admit that that statement was  
19 made by a person with knowledge and we get a page of objections  
20 and an answer that ultimately says subject to all of our  
21 objections we admit with qualification because the document  
22 speaks for itself and it's not really an admission against us  
23 anyway.

24           So, you know, when we're suppose to have an answer  
25 that says admit or deny we get the document speaks for itself.

1 And we've given you a lot of case law in our brief that says  
2 the documents don't speak for themselves. That is an improper  
3 objection to make in an RFA. We understand the government is  
4 going to take the position ultimately that nobody has said  
5 anything that can bind the agency. That's fine. They can make  
6 that later when we're trying to offer these into evidence but  
7 for purposes of now all we're saying is these are factual  
8 statements, they are subject to being admitted or denied.  
9 Obviously, all your objections to admissibility you can reserve  
10 until later but we're entitled to a clean record on these  
11 things so that we can try and introduce them. They're evidence  
12 in the case. We need this to be able to do it.

13 Similarly again, if you look at No. 37, same thing,  
14 we've got a direct quote from 95 from the chief of the Medicare  
15 technical issue section talking about the fact that AWP is  
16 different than estimated acquisition cost. And we get again,  
17 the document speaks for itself and it's out of context by the  
18 way. Again, Your Honor, admit it or deny it. You're going to  
19 have your chance to challenge why it's out of context, why it's  
20 not, an admission whatever that may be down the road but let's  
21 at least clean this record up for these that are direct quotes  
22 and say we admit it, we deny it.

23 THE COURT: Well--

24 MR. WINCHESTER: I don't know if you want to do these  
25 categorically.

1 THE COURT: Yeah, it's easier to go one at a time.

2 MS. ST.PETER-GRIFFITH: Your Honor, before we get to  
3 the, before we even get to--

4 THE COURT: Well, why don't you identify yourself for  
5 the record?

6 MS. ST. PETER-GRIFFITH: Oh, I'm sorry, Your Honor.  
7 Ann St. Peter Griffith, from the United States Attorney's  
8 Office in the Southern District of Florida, on behalf of the  
9 United States.

10 Your Honor, before we start going category by  
11 category the United States has raised in its opposition the  
12 issue of do we even need to do this right now. Rule 36  
13 provides that this matter and objections can be deferred until  
14 a later point in time at, closer to trial after dispositive  
15 motions and motions in limine have been heard which will enable  
16 us to avoid having to go through these sort of one by one  
17 which, Your Honor, is--

18 THE COURT: Well it's an '01 case, I hope we're  
19 pretty close to trial.

20 MS. ST.PETER-GRIFFITH: Yes, Your Honor, but there  
21 are a number of matters that might be resolved on dispositive  
22 motions that could substantially, substantially narrow the RFAs  
23 that we're dealing with today, most notably the government  
24 knowledge issue. In addition to relevance considerations there  
25 are many, many documents and many RFAs in the RFAs that were

1 served that are completely outside of the time period of this  
2 case. So we would just raise that before we go through it  
3 category by category, Your Honor, that Your Honor consider take  
4 up the issue of whether it makes sense to defer these until a  
5 later point in time that is closer to trial because frankly  
6 many of them might be resolved just through the course of  
7 motions in limine and dispositive motions.

8 THE COURT: Well, it's a little too late with motions  
9 in Limine, I mean this is discovery.

10 MS. ST. PETER-GRIFFITH: Well, Your Honor, I think  
11 motions in limine in terms of ultimately what Mr. Winchester  
12 was referring to was making a record to go into evidence at  
13 trial. You know, we haven't heard from the defendant as to  
14 which of these RFAs are going to be necessary for them for  
15 purposes of summary judgment, if any. Many, many deal with the  
16 public record. They can use the public record. We're just  
17 going to go through, this could be a very time consuming  
18 process, Your Honor, because each of these RFAs are separate  
19 and Your Honor needs to make a finding as to the objections or  
20 the, in instances where we've admitted the problems associated  
21 with each RFA.

22 THE COURT: Any possibility of withdrawing this  
23 without prejudice to be renewed at a later date?

24 MR. WINCHESTER: Judge, we thought about it and, you  
25 know, we recognize this is a burden on the Court and we're not



1 interested in increasing your workload or the government's but  
2 in fairness we served these a year ago. This is a case they've  
3 been investigating since 1995 and, you know, when counsel says  
4 let's put it off till trial cause maybe I'm going to beat  
5 Abbott on summary judgment, well, in fairness--

6 THE COURT: Yeah.

7 MR. WINCHESTER: --a lot of these RFAs are admit you  
8 knew AWP was higher--

9 THE COURT: Yeah.

10 MR. WINCHESTER: --than acquisition cost. That's  
11 going to bear on summary judgment for us.

12 THE COURT: Well, I have to agree with that.

13 MS. ST. PETER-GRIFFITH: Judge, can we just sort of  
14 try and further narrow the scope though? Can we just focus on  
15 - one of our objections and it's a significant one because of  
16 the number of RFAs that it deals with, there are a whole host  
17 of RFAs that are outside the '91 through 2001 period of the  
18 case, some going back to the early '70s.

19 THE COURT: Okay. Can we limit the time period?

20 MR. WINCHESTER: Well, Your Honor, I think the--

21 THE COURT: At least initially.

22 MR. WINCHESTER: Respectfully, I'd say, no, we can't.  
23 Here's why, our--

24 THE COURT: You can't but I can.

25 MR. WINCHESTER: Well and you may. Your were just

1 asking me, Your Honor. We'll do what you'd like but here's  
2 why I would say we shouldn't, how about that. Our position all  
3 along has been you've charged us with a set of conduct, you say  
4 we did bad things between 1991 and 2001. Okay, that's fine.  
5 The Court's talked about you get discovery through 2003 on what  
6 you allege to be the bad things Abbott did. Our point in  
7 response and Judge Saris has said unequivocally, you are  
8 entitled to run this to ground. I don't know if I'm ever going  
9 to, you know, find your way on this but run it to ground is,  
10 you government, have known about this not just over the time  
11 period you're charging us with but back into the '60s, the  
12 '70s, the '80s.

13 We have direct quotes from government officials in  
14 charge of these programs that say out loud we know average  
15 wholesale price is not a price people are paying and yet this  
16 is what we're using to reimburse. So just trying to conscribe  
17 their knowledge to this 10 year period is not going to give  
18 anybody, including the Court at summary judgment, the full  
19 nature of the government's knowledge of this which Judge Saris  
20 has said we are entitled to discovery and to run to ground and  
21 to make our best pitch to her about why this should defeat  
22 their claims.

23 MS. ST. PETER-GRIFFITH: Your Honor, the burden  
24 associated with going back in time for what we're talking about  
25 and one of the reasons why we have objected so vigorously to

1 keeping to the timeframe that frankly applies to my brother  
2 who are defending Abbott in this case they're very vigorous in  
3 their assertion that this is a '91 through 2001 time period.  
4 Verifying what needs to be verified for this RFAs, going all  
5 the way back to the time period that they have is a significant  
6 burden, Your Honor, and we think it maybe one of marginal  
7 utility, but many, you know, a number of our objections go to  
8 that issue so it is--

9 THE COURT: All right, it's allowed for the limited  
10 time period '91 to 2001.

11 MS. ST. PETER-GRIFFITH: Your Honor, with regard to  
12 the RFAs under category 1 there is one other topic, Your Honor,  
13 a general topic that I think we need to address before we get  
14 into the individual categories and that's the definition of AWP  
15 which is another significant objection which affects all but 50  
16 of the RFAs that are at issue here. Defendants would have us  
17 use a definition that is not the definition that Judge Saris  
18 has articulated. And our position is that that really puts us  
19 in an untenable position because we're admitting to an RFA  
20 using the definition that's not ultimately going to be used at  
21 trial or for purposes of this case perhaps.

22 THE COURT: What's your response?

23 MR. WINCHESTER: Sure, Judge. They want to say well  
24 you're using your own definition of AWP, we don't have to  
25 answer to that. Our whole point here is and we are entitled to

1 get discovery from them that AWP being a price people actually  
2 pay is not what they thought it was. That they thought AWP was  
3 what was in the compendia. So when we present all these RFAs  
4 to them and say, admit you knew that AWP published in the  
5 compendia was not an average price anybody was paying they can  
6 admit that or deny it. They don't get to change it around and  
7 suggest well, Judge Saris said very early in this case AWP  
8 ought to be read strictly as an actual average price. We're  
9 entitled to the discovery to show that in fact that isn't how  
10 the government understood it and the Court has said that. So  
11 when we give them the RFAs they can admit it or deny it. I  
12 mean it's easy for them to do.

13 THE COURT: I agree. I agree. All right, next?

14 MS. ST. PETER-GRIFFITH: Your Honor, if we could go  
15 through the first categories to address what Mr. Winchester had  
16 said, you know, we've asserted our objections--

17 THE COURT: I just have to tell you that my secretary  
18 just found my phone.

19 MS. ST.PETER-GRIFFITH: Oh, terrific, Your Honor.

20 THE COURT: In Neiman Marcus.

21 MS. ST.PETER-GRIFFITH: Oh my. You know we have  
22 answered to the extent that with regard to one through 69 which  
23 address the time period that we're talking about, '91 through  
24 2001, Your Honor, we've admitted whether or not the quote is  
25 contained in the language. We've told them flat out these are

1 RFAs that go to the question of authenticity. We told them we  
2 can work out authenticity. We're not going to object to  
3 authenticity. So it's difficult, we preserved our objections  
4 with regard to the documents but it's difficult to understand  
5 where the problem is.

6 THE COURT: Well, are you willing to enter into a  
7 formal stipulation on the record that you're not going to  
8 challenge the authenticity?

9 MS. ST. PETER-GRIFFITH: Your Honor, I would have to  
10 confer with my colleagues before I can say that.

11 THE COURT: Well before you make assertions like  
12 that.

13 PAUSE

14 MS. ST. PETER-GRIFFITH: Yes, Your Honor, we can.

15 THE COURT: All right.

16 MS. ST. PETER-GRIFFITH: So, you know, it's difficult  
17 to understand where the objection is because we've admitted in  
18 some instances the language is misquoted. In some instances  
19 it's spliced from different pages and put together and our  
20 response reflects that. But to the extent that we can admit  
21 that the language is contained in the document we admit that  
22 the language is contained in the document. So it's difficult  
23 to understand sort of what the concern is on the part of Abbott  
24 with regard to the sufficiency of our response.

25 MR. WINCHESTER: And to simply - if you look at the

1 cases that we've cited, Judge, the Courts say you get a  
2 request to admit, you admit it, you deny it. You don't say  
3 admitted with the qualification the document speaks for itself  
4 and is out of context. Those are not proper admissions. All  
5 we're looking to do is have them clean it up and take out what  
6 we would submit are the objections that are just not proper.  
7 We're not saying that they're waiving their ability to contest  
8 admissibility at least later but let's have you say at least  
9 for a quote out of the document that we attached to an RFA for  
10 goodness sakes we admit it was said, we admit it was said by  
11 somebody with knowledge.

12 MS. ST. PETER-GRIFFITH: But, Your Honor, the problem  
13 with that is if the document doesn't get admitted into evidence  
14 the RFA can still be used. An RFA is admitted for all purposes  
15 in a case. So what we have--

16 MR. WINCHESTER: So they can admit it--

17 MS. ST. PETER-GRIFFITH: So what we have is a problem  
18 where it's the cart before the horse. We have documents that  
19 they're quoting from that may never be admitted into evidence  
20 but the quote may be. And that's a very difficult, you know,  
21 judgment to make at this juncture, Your Honor.

22 MR. WINCHESTER: They can always admit them, Judge.  
23 I mean if their point is you need more context, okay, fine.  
24 Give us the admission that it says what we say it says cause  
25 it's in there. It's a quote. And then you can later say; well

1 now you need to see the rest. Okay, fine, introduce it  
2 yourself.

3 THE COURT: Allowed.

4 MR. WINCHESTER: Next category, Judge, and these are  
5 very similar. We're on now items 144 to 173 and I'll give the  
6 Court a couple of examples, but these are literally admit you  
7 said what you said. So we've got documents, for instance let's  
8 say No. 149, in or about 1984 HHS was convinced as the factual  
9 matter that there was a significant discrepancy between AWP and  
10 actual sales price. We've got documents that back that up, but  
11 that's the factual proposition, admit it or deny it. And we  
12 get, objections, we stand on our objections, no answer.

13 MS. ST. PETER-GRIFFITH: Your Honor, with regard to,  
14 I'm sorry, Mr. Winchester--

15 THE COURT: That was 149.

16 MS. ST. PETER-GRIFFITH: 149, 149 is outside the time  
17 period. That's in 1984. So, and I would tell you that we  
18 stood on our objections with regard to those that were outside  
19 the time period. I think if we move to I believe 166 within  
20 this same category of documents, Your Honor, which, or 167 I  
21 believe is the first one within the time period. With regard  
22 to those we admitted with qualification or denied. The problem  
23 is, is that Mr. Winchester has cited that these are quotes that  
24 come from documents. We requested the documents that they come  
25 from. If you just read the RFA it's not, the items are not in

1 quotes and there's no attribution to a particular document.

2           So our position is we admit that it's in the public  
3 record but for the most part, Your Honor, there are some, you  
4 know, we have to go one by one but for the most part we've  
5 admitted that they may be in the public record but we defer to  
6 the public record because we cannot admit to a paraphrasing of  
7 a document that's not attributed anywhere. And, you know, so -  
8 but we can admit to what's in the public record.

9           MR. WINCHESTER: Judge, for these - these are factual  
10 propositions. We're stating facts. There is, we believe,  
11 ample evidence to support these facts but these are conclusions  
12 drawn from what we believe the evidence is. So when we put it  
13 before them and we say, let's take 172, on June 13, 2000 the  
14 HCFA administrators believed that on several occasions the  
15 administration had unsuccessfully sought from congress the  
16 tools necessary to ensure the system was paying actual price  
17 rather than a contract price and that's a fact. Tell us, we  
18 admit it, we deny it. And they give answers like, subject to  
19 all of our numerous objections we admit that those statements  
20 may exist in the record. Well, that's not an admission or a  
21 denial. We're saying this is the conclusion we draw from the  
22 evidence that's out there. It is a fact. You can say yes or  
23 no, admit it, deny it, that this is what was the state of  
24 knowledge of the organization that administered the programs at  
25 issue in the case. They can do that.



1 MS. ST. PETER-GRIFFITH: Your Honor, I think when we  
2 began this discussion concerning this particular category of  
3 documents that Mr. Winchester attributed them as coming from  
4 documents them as being quoted form documents and we have no  
5 attribution, you know, that's why this particular - and, Your  
6 Honor, for these we do have responses. So the question is the  
7 sufficiency of the responses. At a minimum we need attribution  
8 as to where this is coming from because, you know, we can make  
9 a statement or they can pull a statement, paraphrase it from  
10 the public record but outside of the context not understanding  
11 where the context is that they're pulling that from it's very  
12 difficult for us to, you know, say yes definitively X,Y, and Z.

13 MR. WINCHESTER: Judge, the first 69 were the ones  
14 that were the direct quotes. These are just facts. This is  
15 what RFAs are so we say factually here is a fact, admit it or  
16 deny it.

17 THE COURT: Allowed. Next?

18 MR. WINCHESTER: Next issue, Your Honor, has to do  
19 with a series of RFAs that we have that basically go to were  
20 there laws in place that governed the conduct you're  
21 complaining about here. So for instance if you look at our  
22 request 105 we say during the relevant claim period time at  
23 issue no federal statute or regulation required Abbott or any  
24 other manufacturers to report prices to the publishers that  
25 incorporated all distinct available to certain wholesalers,

1 distributors or purchasers of drugs. Admit there was no law  
2 that required us to do that. And we get objections, they stand  
3 on their objections. That's legal conclusions. Respectfully  
4 we've got cases that say was there a law, is it in effect.  
5 Tell us, was there a law there or not? They object and give us  
6 no answer. And for all of these that fall in this category,  
7 and there are a number set forth in our brief, they're all  
8 basically like this. Admit that there was no rule. And if  
9 they want to come forward and deny that, then fine. at least  
10 we'll be able to pursue from them which rule do you say applied  
11 here. Which rule do you say actually told us that we would  
12 have to report to those publishing compendia prices that  
13 include discounts? So they can tell us whether they believe  
14 some rule required it or didn't.

15 MS. ST. PETER-GRIFFITH: Your Honor, if I could just  
16 get a clarification so that we understand from the record which  
17 RFAs we're talking about in this category. I have 72 through  
18 85 and 87 through 109.

19 MR. WINCHESTER: I have 72 to 85, 87 and 88, 96  
20 through 100, 105 to 109 and 142 to 143.

21 MS. ST. PETER-GRIFFITH: Okay. I just wanted to  
22 understand the universe, Your Honor, of what we're talking  
23 about here.

24 Your Honor, RFAs are about admitting facts. They're  
25 not about drawing legal conclusions and, you know, it's our -

1 whether or not a statute exists saying does 42 CFR, you know,  
2 Section 1937 exist that's a fact that can be denied or  
3 admitted. Asking about whether or not X, Y and Z legally is  
4 the case is a legal proposition and RFAs are not, that's not  
5 the purpose and intent of an RFA is to draw--

6 THE COURT: Well--

7 MS. ST.PETER-GRIFFITH: --a legal conclusion.

8 THE COURT: Denied to the extent that it requires a  
9 legal conclusion. Anything that requires a legal conclusion,  
10 no, but allowed for the balance.

11 MR. WINCHESTER: And, Judge, I just point out Rule 26  
12 but its text says you can use RFAs for the application of law  
13 to fact. And we have plenty of cases in there that say the  
14 existence of a statute - was there a statute that governs the  
15 conduct you're alleging--

16 THE COURT: I've made a ruling.

17 MR. WINCHESTER: Okay. The next set, Your Honor, are  
18 a few requests that concern the government's position about the  
19 application of law to fact, exactly what Rule 26 talks about.  
20 And these are, for instance let's look at one.

21 PAUSE

22 MR. WINCHESTER: If you look in 89 or 90, we're just  
23 trying to get them to say what is your position here about  
24 what's right and what's wrong. So in No. 89 we say it is the  
25 plaintiff's position that a provider who submitted a claim for

1 payment to Medicare Part B or Medicaid for a drug knowing that  
2 it would be paid at an amount that exceeded acquisition has  
3 submitted a false claim under the False Claim Act. Could not  
4 be more material to the claims they're raising against us.

5 No. 90 is just the flip side. It says, it's your  
6 position that such a provider did not submit a false claim.  
7 It's one way or the other. And they can tell us and what we  
8 get are objections and not answers. These are application of  
9 law to fact. Admit that under this circumstance, which they  
10 are alleging in this case is false claim if anything, but we're  
11 entitled to know and these are the types of things where  
12 they're standing on objections and they will not tell us.

13 MS. ST. PETER-GRIFFITH: Your Honor, each of these  
14 RFAs start with the, it is the plaintiff's position. The  
15 United States position in this case is not a fact, that they're  
16 asking us to admit that this is, this is what you're arguing  
17 and that's not a proper purpose for an RFA. It's perhaps  
18 appropriate for in the context of a contention interrogatory  
19 which is what we point out to them but simply say and each of  
20 them start exactly this way, it is the plaintiff's position  
21 that. And we're at a loss frankly, Your Honor, to understand  
22 what the purpose of these RFAs is other than to perhaps lock us  
23 into a particular legal position which frankly might change  
24 over the course of discovery.

25 The United States' position and legal argument can

1 evolve over the course of a case so simply to say it is the  
2 United States position that and to have that as an admitted  
3 fact, Your Honor, is we don't see the utility in that and it's  
4 not a proper purpose for an RFA.

5 MR. WINCHESTER: Judge, the rule itself says you can  
6 ask RFAs that apply law to fact. In terms of evolution we've  
7 got 13 years of evolution here. I mean frogs could walk on  
8 land in less time than they've had to evolve their theories.  
9 They know what their theories are and so when we say it's your  
10 position that it's this or that, yes or no, they can admit it  
11 and the rule allows it.

12 THE COURT: I'm going to allow it.

13 MR. WINCHESTER: Last issue, Judge, are a series of  
14 requests that go directly to government knowledge in the sense  
15 that we say, look, one of the many ways, many, many ways in  
16 which you knew that the published average wholesale price you  
17 were using to reimburse wasn't what people really bought the  
18 drugs for is you, government, bought the drugs at prices  
19 substantially below AWP. So we give them requests that say for  
20 instance No. 115, admit you purchased Vancomycin from Abbott at  
21 X price. And what we get in response is, well we deny that  
22 Medicare and Medicaid purchased it at that price. Well, that's  
23 not an answer. We asked a question that said did you, the  
24 government, purchase at that price. They don't answer the  
25 question. And so we have a number of these like this that are

1 pure facts. It's in their capability to answer the question.  
2 No dispute that these are factual matters and they won't answer  
3 them.

4 MS. ST. PETER-GRIFFITH: Your Honor, if I could just  
5 ask for clarification from Mr. Winchester so that we got a  
6 clear record as to which--

7 MR. WINCHESTER: Certainly.

8 MS. ST. PETER-GRIFFITH: --RFAs we're talking about.

9 MR. WINCHESTER: I certainly can. I'm talking about  
10 Nos. 112, 114 through 123, 125 to 128, and I believe also 142  
11 and 43 is what I have.

12 MS. ST. PETER-GRIFFITH: Okay, Your Honor, with  
13 regard to 112, we've already indicated that we would answer  
14 that. With regard to those dealing with government purchases  
15 our position is, Your Honor, that purchases under the federal  
16 supply schedule, purchases by the VA is first of all incredibly  
17 burdensome to place upon us to have to seek out that  
18 information and it's wholly immaterial. This case is not about  
19 the government purchasing drug products. It's about the  
20 reimbursement programs of Medicare and Medicaid. We have  
21 answered these RFAs to that extent. I'm not sure that each of  
22 the RFAs that Mr. Winchester listed deals directly with the  
23 government purchasing and frankly, Your Honor, I think we  
24 probably - if I could just check.

25 MR. WINCHESTER: No, that's fair. They don't all,

1 Judge. There are certain of them like 127 if you look at it,  
2 it says admit that during the relevant claim period in  
3 connection with Medicaid--

4 THE COURT: Okay, can we narrow it to the ones you're  
5 actually seeking.

6 MR. WINCHESTER: What's that?

7 THE COURT: Can we narrow it then to the ones you're  
8 actually seeking.

9 MR. WINCHESTER: These are among the ones we're  
10 actually seeking. Counsel pointed out that not every one of  
11 these deals directly with government purchases--

12 THE COURT: Right.

13 MR. WINCHESTER: --and that is true. There are a  
14 couple of these that are not directly on admit you bought the  
15 drug at X price. And so I just wanted to make that clear.  
16 There are some like you see in 127 that just says basically  
17 admit that during the relevant claim period we gave you AMP  
18 data, average manufacture price, and we get, and this is a good  
19 one, we get admitted with the qualification that you only gave  
20 us AMP in order to do the Medicaid rebates and everything else.  
21 Again, that's one that we think is a lot more verbiage than  
22 just what we're entitled to which is admit it.

23 MS. ST.PETER-GRIFFITH: Your Honor, our problem is  
24 this. These are the types of questions that we're going to  
25 have to go through category by category because we have

1 responded and the issue I believe is the sufficiency of the  
2 qualification that we've provided and with each of these being  
3 - we can't just sort of wholesale category say the response  
4 isn't sufficient because there's a qualification to the answer.  
5 We have provided an answer and the sufficiency I think we're  
6 going to have to through one by one because we are committed to  
7 qualify our answer to the extent that it is appropriate.

8 THE COURT: All right, I'm going to deny this one  
9 without prejudice and come back to it if you feel you really  
10 need it.

11 MR. WINCHESTER: Thank you, Judge. I think that's it  
12 on this one.

13 THE COURT: All right. Then we move to 5179.

14 MR. GOBENA: Yes, Your Honor. Good afternoon, Gejaa  
15 Gobena here on behalf of the United States. And I have some  
16 good news to report which is that counsel and I have made  
17 substantial progress in narrowing the issues that are, we need  
18 to present to Your Honor.

19 THE COURT: All right.

20 MR. GOBENA: And I don't know if you want me to go  
21 through the issues that we resolved, but I think--

22 THE COURT: No.

23 MR. GOBENA: --but I think we agree--

24 THE COURT: Done.

25 MR. GOBENA: Okay. We've agreed to memorialize it in